SINGAPORE REPORTS.

CHEN SU LAN v. REX.

[App. Crim. Juris. (Murray-Aynsley C. J.)
October 26, 1949]
[Singapore — Magistrate's Appeal No. 100 of 1949]

Municipal Ordinance S. 246(6) — Failure to comply with notice — Notice issued by officer of Municipal Commissioners in his own initiative — Validity of notice.

This was an appeal against the conviction of the appellant for failure to comply with a notice served under S. 246 (6) of the Municipal Ordinance. It appeared that the notice was issued by an officer of the Municipal Commissioners on his own initiative.

Held, that the notice in such cases must be given by the Municipal Commissioners or at least by their direction and cannot be given by an officer on his own initiative.

Cases referred to :—

(1) *St. Leonard Vestry v. Holmes,* 50 J.P. 132.

(2) *Bowyer, Philpott and Payne Ltd. v. Mather* (1919), 1 K.B. 419.

MAGISTRATE'S APPEAL.

Mark Morrison for the Appellant.

J. L. Harris for the Respondent.

Murray-Aynsley, C. J. : — In this case the appellant had been convicted under section 246(6) of the Municipal Ordinance for failure to comply with a notice served under that section.

This section resembles section 93 of the Public Health Act, 1936. The section, in substance, has been re-enacted from earlier Public Health Acts. As such it has received judicial interpretation. Of it *Lumley* says at p. 301, "Observe that the notice must be given by the authority, or at least by their direction; it cannot be given by an officer on his own initiative". The authorities cited are *St. Leonard Vestry v. Holmes*[1] and *Bowyer, Philpott and Payne Ltd. v. Mather*[2]. In the former Day, J. said: "It is important that the Vestry should exercise a discretion in each case, and it is not enough that the inspector does what he pleases, and then relies on his acts being afterwards approved by the Vestry".

In the present case it is clear that the notice was issued by an officer of the Commissioners on his own initiative. The notice and the subsequent proceedings are therefore bad. Various other objections were taken by the appellant but, in the circumstances, it was not necessary for me to express any opinion.

The appeal was allowed. The conviction and the nuisance order were quashed.

Appeal Allowed.

BHASKARAN AND 2 OTHERS v. REX.

[App. Crim. Juris. (Murray-Aynsley C. J.)
October 26, 1949]

[Singapore — Magistrates Appeal No. 82 of 1949]

Penal Code Ss. 116 and 161 — Charge of abetment of offence of accepting illegal gratification by public servant — Whether it is essential that public official should be capable of doing what the accused required him to do.

In this case the appellants were convicted under Sections 116 and 161 of the Penal Code on a charge of abetting the offence by a public servant of accepting gratification other than legal remuneration as a motive for showing favour in the exercise of his official duties. The learned Magistrate at the trial found as a fact that neither of the public officials in this case was capable in the proper exercise of his official functions of doing what the accused required. On appeal it was argued that for a charge under section 161 to succeed the favour to be shown must be a favour which the public servant is capable of granting.

Held, that a public official can be guilty of an offence under section 161 of the Penal Code whether or not he was in a position in the exercise of his official duties to grant the favour asked for so long as he was aware that the bribe was offered to him in the belief that he could show such favour.

Cases referred to :—

(1) *Shamsul Huq* 1921 A.I.R. (Cal.) 344.

(2) *Venkatarama Naidu* 1929 A.I.R. (Mad.) 756.

(3) *Quazi Rahimullah* 1935 A.I.R. (Pesh.) 26 at p. 29.

(4) *Ajudhia Prasad* 51 All. 456.

(5) *Phul Singh* 1942 I.L.R. Lahore 402.

MAGISTRATE'S APPEAL.

D. S. Marshall for the 1st and 2nd Appellants.

E. M. Tampoe Phillips for the 3rd Appellant.

A. V. Winslow (D. P. P.) for Respondent.

Murray-Aynsley, C. J. : — In this case the appellants were charged and convicted of abetting an offence under section 161 of the Penal Code.

The petition of appeal set out numerous grounds, some of them going to the merits, others technical. As regards merits, the chief feature of the case is the fact that neither of the prosecution witnesses spoke or understood anything but English; on the other hand, the first and second appellants do not appear to have understood or spoken any English. It appears that the first appellant had killed a person in an accident to a motor vehicle which he was driving. This accident was followed by investigations by the Naval Police in which the second prosecution witness, Morton, was concerned. It appears that the third accused approached the first prosecution witness, Noble, also a Naval

policeman but not concerned in the investigation, with a view to contacting Morton with the further object of influencing the latter. The second accused was present. At the first two meetings the second and third accused were present. At a third meeting the first accused was present and handed a sum of $200 to Morton. The defence was that the sum of money handed over was not by way of a bribe but was given at the suggestion of the prosecution witnesses as compensation to the mother of the person killed. This defence was rejected by the learned District Judge and he was perfectly entitled to reject it.

The prosecution witnesses were not accomplices. Therefore it seems that, subject to technical matters to be considered later, the offence, if any, was clearly established as against the third appellant. As regards the first appellant, it is a matter of inference. He was the person who had reasons to placate the police and it was he who handed over the money. I think that the learned District Judge was perfectly entitled to draw the inference that he was taking part in the offence. As against the second appellant, the case was also a matter of inference. He was not concerned in the investigation as was the first appellant. He was, however, present on three occasions. On the second occasion the second and third appellants left the coffee shop when negotiations were being conducted and on their return an offer of money was made by the third appellant. In the circumstances it was necessary to infer that the second appellant was either a stranger to the transaction, for whose presence no reasonable explanation could be given, or that he was taking part in the negotiation. His own evidence showed that he was a go-between the first and third appellants.

I shall now deal with the technical matters. I do not think that any complaint as to the wording of the charge in the final form as being of any substance. The substantial matter of law is based on the finding by the learned District Judge that neither of the prosecution witnesses was in a position to show favour in return for a bribe. On this matter there is a difference of opinion among the Indian Courts on the interpretation of section 161. I do not understand the restrictive interpretation put on the section by the Madras and Calcutta Courts. I should have thought that illustration (c) clearly negatived it. The essentials of the offence are, being a public servant, the receipt of a reward and the motive. It is explained that "A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words (a motive or reward for doing)". In view of this I should have thought that the motive of the giver, if known to the recipient, was sufficient. It is true that in many cases a recipient of a bribe might also be convicted of cheating.

I think that it is also clear that the Naval Police are public servants within the meaning of section 21 of the Penal Code.

The sentences are not excessive. The appeals are dismissed.

Appeals Dismissed.

IN THE MATTER OF AN INDENTURE OF MORTGAGE BETWEEN TAN LIAN CHYE AND THE GREAT EASTERN LIFE ASSURANCE CO., LTD.

[Orig. Civil Juris. (Murray-Aynsley C. J.)
October 31, 1949]

[Singapore — Originating Summons No. 162 of 1949]

Direction in Will for conversion to immovable property — No immediate trust for sale — Mortgage of interest under Will — Whether registrable as interest in land under Registration of Deeds Ordinance Section 5.

By his Will Tan Tye, (inter alia) devised and bequeathed to his Trustees all the residue of his real and personal estate upon trust to convert into money such portion as did not consist of land or houses and to invest such money in the purchase of land and houses in Singapore and he directed his Trustees to retain and not to sell or encumber the land or houses, and after declaring certain specific trusts and providing for the payment of an annuity out of a portion of his residuary estate, he provided that the remainder of the income of his residuary estate should be divided into ten equal shares or parts and that two of those shares should be paid periodically to his son Tan Lian Chye, and the remaining shares of the income should be paid periodically to certain persons as therein directed. And the Testator directed that those trusts should continue for a period of 21 years after the decease of the survivor of all his children, grandchildren and nephews living at his death, and at the expiration of that period he directed his Trustees to sell and convert his residuary estate into money and to divide it between his male issue living at that time.

On 29th April, 1948 (Tan Tye having died and his Will having been proved many years previously) the said Tan Lian Chye executed a Mortgage of his two tenth shares in the income of the residuary estate of Tan Tye, in favour of the Great Eastern Life Assurance Company Limited to secure the repayment and interest of a certain sum advanced to the said Tan Lian Chye by the Great Eastern Life Assurance Company Limited.

The Mortgagees having produced the Mortgage to the Registrar of Deeds for registration under the provisions of the Registration of Deeds Ordinance (Cap. 121), the Registrar refused to register such mortgage on the ground that the Mortgage being a mortgage of only a share in a deceased's estate was not an assurance by which land within the Colony was affected and thereby did not come within the ambit of section 5 (1) of the Registration of Deeds Ordinance (Cap. 121).

An Originating Summons was taken out by the Mortgagees under the provisions of section 25 of the